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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

THOMAS E. PEREZ, Secretary of Labor,  
UNITED STATES DEPARTMENT OF  
LABOR,

Plaintiff,

v.

RMRF ENTERPRISES, INC.; DANIEL J.  
SHAW; RMRF ENTERPRISES, INC.  
PROFIT SHARING PLAN

Defendants.

Case No. 3:15-cv-1453

**COMPLAINT** for violations of the  
Employee Retirement Income  
Security Act ("ERISA")

This action arises under Title I of the Employee Retirement Income Security Act of 1974 ("ERISA"), as amended, 29 U.S.C. §§ 1001-1191c, and is brought by the Secretary of Labor under ERISA §§ 502(a)(2) and (5), 29 U.S.C. §§ 1132(a)(2) and (5), to enjoin acts and practices that violate the provisions of Title I of ERISA, to obtain appropriate equitable relief for breaches of fiduciary duty under ERISA § 409, 29 U.S.C. § 1109, and to obtain such further equitable relief as may be appropriate to redress and to enforce the provisions of Title I of ERISA.

COMPLAINT FOR VIOLATIONS OF ERISA  
SECRETARY OF LABOR V. RMRF ENTERPRISES, INC. ET AL.

Jurisdiction and Venue

1  
2 1. This Court has jurisdiction over this action pursuant to ERISA § 502(e)(1), 29  
3 U.S.C. § 1132(e)(1).

4 2. Venue of this action lies in the Northern District of California pursuant to ERISA  
5 § 502(e)(2), 29 U.S.C. § 1132(e)(2), because Defendant Daniel J. Shaw resides in Los Gatos,  
6 California, and the RMRF Enterprises, Inc. 401(K) Savings & Profit Sharing Plan was  
7 administered in Los Gatos, California, within this district.

Parties

8  
9 3. At all relevant times, the RMRF Enterprises, Inc. 401(K) Savings & Profit  
10 Sharing Plan (the “Plan”) was an employee benefit plan within the meaning of ERISA § 3(3), 29  
11 U.S.C. § 1002(3), which is subject to the provisions of Title I of ERISA pursuant to ERISA §  
12 4(a), 29 U.S.C. § 1003(a).

13 4. At all relevant times, RMRF Enterprises, Inc. (the “Company”), was a real estate  
14 brokerage company incorporated in California and located in Los Gatos, California; the sponsor  
15 and Plan Administrator of the Plan; a fiduciary of the Plan within the meaning of ERISA  
16 §§ 3(21)(A)(i) and (iii), 29 U.S.C. §§ 1002(21)(A)(i) and (iii); and a party in interest to the Plan  
17 within the meaning of ERISA §§ 3(14)(A) and (C), 29 U.S.C. §§ 1002(14)(A) and (C).

18 5. At relevant times, Defendant Daniel J. Shaw (“Shaw”) was an officer and owner  
19 of the Company and a Trustee of the Plan; exercised discretionary authority and control  
20 respecting the management and disposition of the Plan and its assets; exercised discretionary  
21 authority and responsibility in the administration of the Plan; was a fiduciary of the Plan within  
22 the meaning of ERISA §§ 3(21)(A)(i) and (iii), 29 U.S.C. §§ 1002(21)(A)(i) and (iii); and was a  
23

1 party in interest to the Plan within the meaning of ERISA §§ 3(14)(A), (E) and (H), 29 U.S.C. §§  
2 1002(14)(A), (E) and (H).

3 6. The Plan is named as a Defendant under Rule 19(a) of the Federal Rules of Civil  
4 Procedure solely to ensure that complete relief can be granted.

5 Factual Allegations

6 7. Paragraphs 1 through 6 above are realleged and incorporated herein by reference.

7 8. The Plan was established effective September 1, 1994 by the Company to provide  
8 benefits to its employees upon retirement.

9 9. The Plan's governing documents identify Defendant Shaw and his spouse, Amber  
10 Shaw, as the Plan's Trustees.

11 10. The Plan's governing documents identify the Company as the Plan Administrator.

12 11. At all relevant times, Defendant Shaw had authority over the Company's  
13 corporate bank account(s).

14 12. Between approximately January 2007 and December 2014, Defendants Shaw and  
15 the Company caused the Plan to invest almost all of its assets in high-risk, hard-money loans  
16 purportedly secured by deeds of trust ("trust deed investments").

17 13. The Plan was one of many investors in the trust deed investments, which were  
18 packaged and made to at least 50 different borrowers, some of whom were parties-in-interest to  
19 the Plan.

20 14. LG Servicing, Inc., a company affiliated with Defendants RMRF Enterprises and  
21 a party in interest to the Plan under § 3(14) (G), 29 U.S.C. §§ 1002(14)(G), acted as the loan  
22 servicer for the trust deed investments and received fees paid by the Plan for these investments.



1 whose interests are adverse to the interests of the Plan or the interests of its participants and  
2 beneficiaries, in violation of ERISA Sections 406(b)(1) and (2), 29 U.S.C. § 1106(b)(1) and (2);

3 (f) participated knowingly in the breaches of fiduciary duty of other fiduciaries, in  
4 violation of ERISA Section 405(a)(1), 29 U.S.C. § 1105(a)(1);

5 (g) enabled another fiduciary to commit a breach of ERISA through failure to comply  
6 with ERISA Section 404(a)(1), in violation of ERISA Section 405(a)(2), 29 U.S.C. § 1105(a)(2);  
7 and

8 (h) made no reasonable effort under the circumstances to remedy the breaches of  
9 another fiduciary of which they had knowledge, in violation of ERISA Section 405(a)(3), 29  
10 U.S.C. § 1105(a)(3).

11 18. As a direct and proximate result of the breaches of fiduciary duties committed by  
12 the Company and Shaw, as described in paragraphs 1 through 15 above, the Plan has suffered  
13 losses, including lost-opportunity costs, for which the Defendants are jointly and severally liable  
14 pursuant to ERISA § 409, 29 U.S.C. § 1109.

15 Prayer for Relief

16 WHEREFORE, the Secretary respectfully requests that the Court issue and Order  
17 granting relief as follows:

18 A. Ordering the Company and Shaw to restore to the Plan any losses, including lost-  
19 opportunity costs, resulting from fiduciary breaches committed by them or for which they are  
20 liable;

21 B. Permanently enjoining the Company and Shaw from violating the provisions of  
22 Title I of ERISA;

1 C. Removing the Company and Shaw as fiduciaries of the Plan and permanently  
2 enjoining Defendant Shaw from serving as a fiduciary of, or service provider to, any ERISA-  
3 covered employee benefit plan;

4 D. Awarding the Secretary the costs of this action;

5 E. Awarding post-judgment interest; and

6 F. Ordering such further relief as is appropriate and just.

7  
8 Date: March 30, 2015

Respectfully submitted,

9 M. PATRICIA SMITH  
Solicitor of Labor

10 JANET M. HEROLD  
Regional Solicitor

11 DANIELLE L. JABERG  
12 Counsel for ERISA

13  
14 By: /s/ Rose Darling  
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15 Trial Attorney

16 Attorneys for the Secretary  
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